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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 150

A. M. GILSTRAP, CORA D. GILSTRAP, AND VERA G. WHITE,

vs.

Petitioners,

STANDARD OIL COMPANY, AN OHIO CORPORATION; STANDARD OIL COMPANY OF CALIFORNIA, A CORPORATION; J. A. BROWER, W. N. BROWER, E. F. KELLER, EARL WARREN, JOE BRANDON, M. B. DRIVER, GEORGE C. PERKINS, ROBERT P. TRACY, AND DONALD A. PEARCE.

No. 151

A. M. GILSTAP,

vs.

Petitioner,

STANDARD OIL COMPANY, AN OHIO CORPORATION; STANDARD OIL COMPANY OF CALIFORNIA, A CORPORATION; J. A. BROWER, ET AL.

PETITION FOR WRIT(S) OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

A. M. GILSTRAP,
CORA D. GILSTRAP,
VERA G. WHITE,
Pro Se.

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STANDARD OIL COMPANY, AN OHIO CORPORATION; STANDARD OIL COMPANY OF CALIFORNIA, A CORPORATION; J. A. BROWER, ET AL.

PETITION FOR WRITS OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition hereby jointly, of A. M. Gilstrap, and Cora D. Gilstrap, his wife, and Vera G. White, each concerned

in Record No. 9158; and, same A. M. Gilstrap in Record No. 9200, each by said records respectfully set forth the following:

Summary Statement of Matter Involved.

The controlling issue involved in the present cases is whether the actions of respondents, as set forth: First, in No. 9158, its "First Amended Complaint" as to all named defendants thereto (No. 9158; R. 3 to 47, incl.) and its "Second Amended Complaint" likewise (No. 9158; R. 135 to 167, with Exhibits annexed each time Verified, R. 180; with no verified Answers thereto) and, No. 9200, its First Amended Complaint (No. 9200; R. 80 to 145, also verified, R. 132-133), or either of such proposed Amended Complaints showing such wilful actions of respondents, constitute restraint of commerce in violation of the Act of 1890, c. 647, 26 Stat. 209, 15 U. S. C. A. (popularly known as the Sherman Act).

Decision(s) in both cases, fully captioned above as separately No. 9158 and No. 9200, in U. S. Circuit Court of Appeals, 9th Circuit, are covered by one opinion of date, January 6th, 1940, rehearing denied March 13th, 1940; said Decision, likewise reported, in:

Gilstrap v. *Standard Oil Co.*, 108 F. (2d) 736.

All petitioners, jointly and severally, in said two captioned cases, repeat here, for above Honorable Court's convenience, the full wording of said joint decision as to both said cases, to-wit:

"Before: WILBUR, GARRECHT and STEPHENS, Circuit Judges.

WILBUR, Circuit Judge:

In these cases the trial court sustained motions to dismiss upon the ground that no substantial Federal

question was presented by the respective complaints. The action of the trial court was correct. *Foster & Kleiser* v. *Special Site Sign Co.*, 85 F. (2d) 742; *Champlin Refining Co.* v. *Commission*, 286 U. S. 210, 234; *Levering* v. *Morrin*, 289 U. S. 103.)

The respective judgments are affirmed.

(Endorsed:) Opinion. Filed Jan. 6, 1940, Paul P. O'Brien, Clerk."

I.

That concisely under above clear-cut affirmation of ruling of dismissal of all said petitioners' proposed complaints; First, in No. 9158, its "First Amended Complaint" as to all named defendants thereto (R. 3 to 47, incl.); and its "Second Amended Complaint" likewise (R. 135 to 167), with Exhibits "A" and "B" thereto (R. 168 to 180). Same proposed complaints each time duly verified, the while, no verified answers; and in

No. 9200, its first amended complaint (R. 80 to 145, incl.) having annexed same Exhibits "A" and "B" the said "B" expanded into or takes in Exhibit "B-1";

And, the which, said three (3) proposed complaints, petitioners each jointly and severally do contend the same and each thereof states *a substantial Federal Question.* Holding * * * '*no substantial Federal Question* * * *' would certainly tend to * * * raise such Question, it will be argued by petitioners under most recent rulings of U. S. Supreme Court.

II.

Action No. 9158 (9th Circuit) begun in Federal District Court, Los Angeles, September 18th, 1937, and 'First Amended Complaint' (R. 3 to 47, verified 46) filed February 12, 1938, for treble damages, was denied by His Hon. Judge Yankwich, without leave to amend as to Respondents

* * * 'Warren, Tracy, Brandon, Driver and Perkins' (R. 134, in No. 9158).

And, 'Second Amended Complaint' (No. 9158, R. 135 to 180, Verified) and Filed December 7th, 1938, to which all Motions to dismiss granted by His Honor, February 3, 1939; His Honor, thereunto observing "* * * Not within the jurisdiction of the United States Court, unless it states a cause of action under the Anti-Trust Law." (No. 9158, R. 283.)

This, notwithstanding Plaintiffs' Motion for Default of Standard Oil Company, an Ohio corporation (No. 9158, R. 264-266 & Re; Service on Secy. of State, R. 180-181-182) and Motion of Standard Oil Company, an Ohio corporation, on its Special Appearance having been granted, (No. 9158, R. 282-283); Judgment, R. 286.

In No. 9158 from 1919, the plaintiff A. M. Gilstrap had been exploring and purchasing or leasing some 40,000 acres of petroleum and gas lands in the Capay Valley, in the County of Yolo (R. 138, fol. 127), to extract and ship products in interstate and foreign commerce, and expended more than $80,000 (R. 139, fol. 128). Had there been no interference, he would have drilled at least 30 wells, and produced and shipped from each well 50,000 barrels per day of paraffin-base oil. (R. 141, fol. 129). Plaintiff, daughter, Vera G. White had also $50,000 in the property, and plaintiff Cora D. Gilstrap, his wife, a community interest (R. 153, fol. 138; 163, fol. 145).

There is no dispute of San Martinez Oil Company having acquired all said properties as (ostensible) lessee from said plaintiff (R. 146, fol. 133), or of the admissions by other defendants of possession of government analyses and evidence of mineral deposits and their values, as well as of the cores and samples from said drillings (R. 165, fol. 146). In No. 9158.

That these leaseholds and acreages with investments amounting to $130,000 in addition to additional potential production, and the drilling business, are a total loss to petitioners is not and cannot be, denied. Had the defendants carried out, or had they not prevented, completion of the 30 wells and their production until 1944, the production through samples, analyses, etc., would have been marketed outside this State in great quantities (R. 144, fols. 131-132). And defendants did "in and during the years about 1924 to and including 1937, unlawfully fail, refuse and neglect to complete said or any well upon said lands as so agreed, and did acquire and deprive the plaintiffs of their said lands, leaseholds, petroleum, natural gas and hydrocarbon substances, and all papers, documents, maps, leases, records, reports, analyses, business, values and evidences thereof" (R. 145, fol. 132) said No. 9158. By the same paragraph X (R. 144-145), it is alleged that the defendants so did "for their own benefit, gain and profit, and to monopolize and restrain the plaintiffs and the public from producing, shipping or marketing said products and minerals * * *, and monopolize and restrain all said trade and commerce therein".

Because of all hereof, Petitioners have been damaged in their business which wholly destroyed by all of Respondents' tortious acts, and suffered the damages Prayed for (No. 9158, R. 167) and, likewise in No. 9200, asked for, by and on behalf of A. M. Gilstrap, individually because of all defendants variously joining the abominable scheme somewhere along the line, that damages action for violation of provisions of Anti-Trust Act lies against each defendant herein, to-wit:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the District in which the defendant

resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

15 U. S. C. A. Sec. 15;
Wogan v. *Am. Sugar Ref. Co.* 215 Fed. 273.

"If by necessary operation of the conspiracy, there is an actual restraint the statute is violated, the actual intent being immaterial."
Standard Sanitary Mfg. Co. v. *United States*, 226 U. S. 20, at 49;
Paramount Famous Corp. v. *United States*, 282 U. S. 30, at 49.

* * * "* * * it is sufficient that it is *diverted* or restricted to certain desired channels, which was the purpose of this conspiracy."
Ramsey Co. v. *Associated Billposters*, 260 U. S. 501, 43 S. Ct. 167, 67 L. Ed. 368.

Petitioner's privacy, Fresno, invasion of his home, as recent as "plaintiff is informed and believes, and upon that ground alleges that on or about the month of September, 1937" was invaded (R. 118, No. 9200 by defendants, "* * * each individually, in fortherance of and to thereby carry out the * * *" (R. 118-119) same, "* * * said scheme * * *" (105 No. 9200). Too, all to the great damage of the public and this plaintiff's continuing damage by virtue of all aforesaid defamatory publications (R. 119, end par. XXIV in No. 9200). Also, highly valuable articles and data carried away, by said defendants which plaintiff-appellant describes as near as he may, in Paragraph XXVIII of First Amended Complaint (R. 122-123, No. 9200); and none of defendants venture a single denial by any proper verified pleadings as yet, may we say. The only answers as yet filed, Standard of California (R. 277-287) Not verified;

answer of W. H. Donahue (R. 287-290) (262) Not verified, on the whole, make entire matter Federal Question.

If such, and others acting in unison as further enumerated particularly in Paragraph VI (R. 84-85, in No. 9200) engage exclusively in interstate commerce in petroleum, destroy all right of possession, all petitioners titles to petroleum lands, and the apparatus of another (the Plaintiffs-Petitioners) and prevent them from producing and shipping in commerce great quantities of mineral which are in demand, for many years being from "1930 to and including the year 1937" (R. 84 (79) No. 9200) so that such conspiracy and scheme curtails petitioners potential shipments, *commerce is obviously affected;* but in the course of such exclusive business and object is there no damage by "reason of anything forbidden by the Anti Trust laws"?

In one case it was contended that contracts, licensing, and purely local transactions not actually in transportation, were not actionable under the Anti-Trust laws. But the Supreme Court said: "This contention is not sound."

Standard Oil Co. v. *United States,* 283 U. S. 163.

Too, thereupon we add the whole of Specification of Error, assigned, as being District Court's Error (R. 418, No. 9200):

"I.

That, in view of: 'It is unlawful to issue a blacklist even though not so labelled, where it is calculated to restrict business for the persons so listed' (Federal Antitrust Guide, page 35, citing Eastern States Retail Lumber Dealers Asso. *v.* U. S., 234 U. S. 600) the Honorable District Court, Los Angeles, erred in its order (R. 337-340, No. 9200, of March 13, 1939, in its every detail by which said honorable court held: 'The complaint does NOT state a cause of action under the Anti-Trust Law because none of the allegations here would support such an action' (No. 9200, R. 347) having ref-

erence, of course, to First Amended Complaint, filed January 3rd, 1939, herein (R. 77), notwithstanding, the prior observation: 'There is the statement that the plaintiff enjoyed a good reputation and that, for the purpose of blackening and discrediting and besmirching and libeling him and the members of his family, *the defendants published the various articles*'" (R. 344 in No. 9200).

Eastern States Retail Lumber Dealers Asso. v. *U. S.*, 234 U. S. 600;

Buckeye Powder Co. v. *DuPont, Etc.*, 196 Fed. 514.

It is, too, well said by Hon. Leon R. Yankwich, December 4, 1937:

> "If the observable facts are such as to warrant the belief in the mineral character of lands, whether they were such as would sanction investment, is an inference which may be drawn by the trier of facts from the facts on which the conclusion as to the existence of the belief is grounded."
>
> *United States* v. *Standard Oil Co.*, 21 Fed. Sup. 645, 650.

And, petitioners having not had their day in court, yet continue to suffer further untold damages by delay occasioned by not having full hearing in district court as originally asked and prayed for in said Nos. 9158 and 9200, being asked to be brought up jointly to this Honorable Supreme Court of the United States.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. A., Sec. 347 (a)).

2. The date of the judgment of the Circuit Court of Appeals for the Ninth Circuit herein sought to be reviewed is

January 6, 1940 (herein at page 2), and, rehearing by Ninth Circuit denied March 13, 1940.

Gilstrap v. *Standard Oil Co. et al.*, 108 F. (2d) 736.

Questions Presented.

1. Ironically enough, District Court, Los Angeles, presented controlling issue, as to whether Federal question involved, from virtual beginning, February 3, 1939, holding court in Fresno, observing: As to No. 9158:

> "* * * Not within the jurisdiction of the United States Court, unless it states a cause of action under the Anti-Trust Law" (No. 9158, R. 283).

If * * *

> "said *Defendants so gathered* the equivalent of many barrels of said petroleum, and bottled, sealed, encased and recorded all thereof, and a great many cores and reports of the same, for tests, examination and use by dealers and manufacturers in other States and markets, and shipped and transmitted the same and all thereof from Woodland, Los Angeles, and Long Beach in said State, to said State of Ohio and elsewhere, by mail, express, rail and water, in and for the purposes of said commerce and trade, and *likewise did confiscate and monopolize all of* said plaintiffs' samples, cores, and (147) records and ship and transmit the same in and *for the defendants' said marketing, trade and commerce outside said State* of California" (No. 9158, R. 166-167).

Then, is it not a fact that Circuit Court of Appeals for Ninth Circuit may have erred in its Decision(s) as to No. 9158 and No. 9200 (*supra*, 108 F. (2d) 736), therein affirming district court in intimating that in Ninth Circuit Court's opinion there is no substantial Federal question involved: Even where interference with interstate commerce is so de-

liberately intended and directly produced, as by all respondents (defendants below) wilfully acting in unison, per paragraph VI (R. 84-85, in No. 9200 * * * "* * * and did thereby maliciously injure * * *" petitioners herein (R. 85, No. 9200).

2. Did not the Circuit Court of Appeals for the Ninth Circuit err in holding that none of three (two, in No. 9158: R. 3 to 47, and 135-180, verified Dec. 7, 1938; and, one in No. 9200; R. 80 to 145 verified Dec. 31, 1938, at R. 133). Complaints alleged with sufficient definiteness and clearness that petitioners by reason of the primary aim of respondents to monopolize surely lost their all, because of respondents' wilful acts in violation of scope of Sherman Act?

3. Did not said Circuit Court err in holding that virtually the 'World wide' business of the parties hereto, as explained and set forth in said three proposed complaints, is not interstate commerce and that the restraint thereof, complained of by petitioners, is not a violation of the Sherman Act? (End Par. VIII, Tr. 87, No. 9200).

4. Has not the scope of the Sherman Act been "expanded" so as to cover willful intrastate activities, such as set forth in the three (3) complaints, which "directly affect interstate commerce"? The point, too, is directly involved in *Apex Hosiery Co.* v. *Leader*, No. 638, October Term; Certiorari granted February 26, 1940. Likewise, *C. E. Stevens Co., a Corp., et al.* v. *Foster & Kleiser Co.*, No. 41, October Term, 1940; Certiorari granted May 6, 1940.

Reasons Relied On for the Allowance of Writs as to Each, No. 9158 and No. 9200.

1. The decisions affecting both Nos. 9158 and 9200 by Circuit Court of Appeals for the Ninth Circuit in the main that no substantial Federal question presented, is that

effect on interstate commerce of respondents' monopoly and its ruinous effect on petitioners' business was indirect and too remote is in plain conflict with the decisions of this Court, holding such monopoly to be a direct restraint and burden upon interstate commerce.

2. That decision(s) in *Gilstrap v. Standard Oil Co., a Corp., et al.*, 108 F. (2d) 736, by Circuit Court of Appeals for Ninth Circuit, virtually conceding thereby, that main object of conspiracy if to gain control of intrastate aspects of a business, an intent to restrain and obstruct the aspects of a business involving interstate commerce is not such a primary intent as to bring the case within the scope of the Sherman Act is in plain conflict with decisions of this Court holding such an intent to be within the scope of the Sherman Act.

3. The businesses of parties concerned, as explained and set forth in the three (3) proposed Complaints, substantially involve interstate commerce, and (any) conspiracy to restrain or monopolize it is within the scope of the Sherman Act.

4. The instant case(s) No. 9158 and 9200, are within the Sherman Act since the scope of that Act has been extended by the several decisions of this Court which hold that Congressional power over commerce extends to cover not only interstate commerce as such, but intrastate activities which "directly" affect such Commerce.

5. The Circuit Court of Appeals for the Ninth Circuit has decided a question of national importance in conflict with the applicable decisions of this Court.

WHEREFORE, your petitioners, A. M. Gilstrap, and Cora D. Gilstrap, and Vera G. White, each respectfully pray that Writ(s) of Certiorari be issued, as to Nos. 9158 and 9200, out of and under the seal of this Honorable Court,

directed to the Circuit Court for the Ninth Circuit, commanding that court to certify and send to this Court on the date to be designated in said Writ(s), full and complete Transcripts of each record of all proceedings in these cases numbered and titled on its docket

"No. 9158. Term 1939.

A. M. GILSTRAP, and CORA D. GILSTRAP and VERA G. WHITE, *Appellants*,

vs.

STANDARD OIL COMPANY, a Corporation, Standard Oil Company of California, a Corporation, J. A. BROWER, W. N. BROWER, E. F. KELLER, EARL WARREN, JOE BRANDON, M. B. DRIVER, GEORGE C. PERKINS, ROBERT P. TRACY and DONALD A. PEARCE, *Appellees;*

and,

No. 9200

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

A. M. GILSTRAP, *Appellant*,

vs.

STANDARD OIL COMPANY, an Ohio Corporation, and Standard Oil Company of California, a Corporation; SAN MARTINEZ OIL COMPANY, a Corporation; J. A. BROWER, and W. N. BROWER, EARL WARREN, JOE BRANDON, M. B. DRIVER, ROBERT P. TRACY, SAMUEL BERRY, GEORGE C. PERKINS, DONALD A. PEARCE, W. H. DONAHUE, KATIE A. CONNIFF, FRANK M. CARR, L. E. VAN PATTEN, HUGO RADBRUCH, and MARK W. GARBINI; and HEARST PUBLICATIONS, Incorporated, a Corporation; THE CHRONICLE PUBLISHING COMPANY, a Corporation; THE TRIBUNE PUBLISHING CO., a Corporation, *Appellees.*"

to the end that said cases No. 9158 and 9200 may be reviewed and determined by this Court as provided by law

and that your petitioners may have such other and further relief in the premises as to This Honorable Court may seem proper.

Dated Fresno, California, June 8th, 1940.

A. M. GILSTRAP,
In Pro Per.
CORA D. GILSTRAP,
In Pro Per.
VERA G. WHITE,
In Pro Per.

A. M. GILSTRAP and CORA D. GILSTRAP, and Daughter VERA G. WHITE: Address: #118 Peralta Way, Fresno, California.